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FROM: William J. Spatz
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DATE:

November 4, 2004

PLEASE DELIVER AS SOON AS POSSIBLE TO:

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1. Examiner Nina Bhat	U.S. Patent Office	703-872-9310	

Total number of pages including this page: 9

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Re: Serial No.:09/897,986

CUSTOMER NO. 31013

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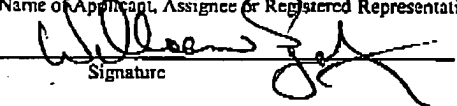
058081-00002

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Arturo Contini et al.
Serial No. : 09/897,986
Filed : July 5, 2001
For : BALSAMIC SAUCE FOR ALIMENTARY USE, WITH A BASIS OF
BALSAMIC VINEGAR OF MODENA
Group AU : 1761
Examiner : Nina Bhat

919 Third Avenue
New York, New York 10022

I hereby certify that this correspondence is
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facsimile number: (703) 872-9310 on November 4, 2004.

William J. Spatz, Reg. No. 30,108
Name of Applicant, Assignee or Registered Representative

Signature
November 4, 2004
Date of Signature

Commissioner for Patents
Alexandria, VA 22313-1450

Sir:

REQUEST FOR ACTION TO ENABLE ISSUANCE

The Issue Fee for the referenced application was paid by first class mail on October 22, 2003. According to the PAIR System, the payment of the Issue Fee was recorded by the USPTO on October 24, 2003. However, the case still has not issued as a patent.

The undersigned contacted the Publications Unit by telephone and was advised today that the only thing precluding this case from issuing is that the Publication Unit believes that it needs the Examiner's initials on a PTO-1449 filed in the application. The PTO-1449 was routed to the Examiner with a Query Control Form on March 23, 2004. A copy of this Query

KL3:2375445.1

Control Form and the accompanying PTO-1449 Form from the PAIR System are attached hereto. Applicant notes that the subject PTO-1449 was filed with the USPTO under 37 CFR 1.97(a) (duplicate copy of submission attached) after prosecution of the application had closed. Accordingly, it is believed that these references need not be made of record as "References Cited." Applicant respectfully requests that the Examiner so advise the Publication Unit, so that this case can proceed to issuance.


Applicant's counsel also notes that the File History list in the PAIR System for the referenced case indicates that a "Miscellaneous Communication to Applicant" was prepared on July 12, 2004. There is no entry in the File History indicating that this Communication was mailed, and no such Communication was ever received by applicant. If there is a pending communication to applicant which has not been issued, applicant requests that the same be mailed so that this case can proceed to issuance without further delay.

Respectfully submitted,

KRAMER LEVIN NAFTALIS & FRANKEL LLP
Attorneys for Applicants

Dated: November 4, 2004

By:


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KLJ:2375445.1

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QUERY CONTROL FORM		RTIS USE ONLY	
Application No. <u>09/897,986</u>	Prepared by <u>NH</u>	Tracking Number <u>05904041</u>	
Examiner-GAU <u>Bhat - 1761</u>	Date <u>3-23-4</u>	Week Date <u>02/16/04</u>	
	No. of queries <u>1</u>	<u>IFW</u>	

JACKET			
a. Serial No.	f. Foreign Priority	k. Print Claim(s)	<u>p. PTO-1449</u>
b. Applicant(s)	g. Disclaimer	l. Print Fig.	q. PTOL-85b
c. Continuing Data	h. Microfiche Appendix	m. Searched Column	r. Abstract
d. PCT	i. Title	n. PTO-270/328	s. Sheets/Figs
e. Domestic Priority	j. Claims Allowed	o. PTO-892	t. Other

SPECIFICATION	MESSAGE
a. Page Missing	<p>PTO-1449: Please either initial or line through citations. Copy provided for reference.</p>
b. Text Continuity	
c. Holes through Data	
d. Other Missing Text	
e. Illegible Text	
f. Duplicate Text	
g. Brief Description	
h. Sequence Listing	
i. Appendix	
j. Amendments	
k. Other	
CLAIMS	
a. Claim(s) Missing	
b. Improper Dependency	
c. Duplicate Numbers	
d. Incorrect Numbering	
e. Index Disagrees	
f. Punctuation	
g. Amendments	
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j. Duplicate Text	
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	RESPONSE
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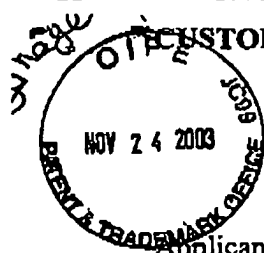
initials

CUSTOMER NO. 31013

058081-00002

1761

Image

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicants : Arturo Contini et al. Confirmation No. : 2457
Serial No. : 09/897,986 Art Unit : 1761
Filed : July 5, 2001 Examiner : N. Bhat
For : BALSAMIC SAUCE FOR ALIMENTARY USE, WITH A BASIS OF
BALSAMIC VINEGAR OF MODENA

Notice of Allowance Mailed : October 1, 2003

Issue Fee Paid : October 22, 2003

919 Third Avenue
New York, New York 10022**CERTIFICATE OF EXPRESS MAILING**

I hereby certify that the correspondence is being deposited with the United States Postal Service "Express Mail Post Office To Addressee" service under 37 C.F.R. 1.10 on the date indicated below, addressed to: MAIL STOP ISSUE FEE, COMMISSIONER FOR PATENTS, P. O. Box 1450, Alexandria, VA 22313-1450 on June 5, 2003.

Express Mail No. EV 020794287 USName: CONRADO DELA CRUZSignature: Conrado Dela Cruz

Mail Stop Issue Fee
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

LETTER PURSUANT TO CFR 1.97(i)

Applicants respectfully request that the enclosed references, and Form PTO 1449 listing the same, be placed in the file of the above-identified application for interested members of the public. The enclosed references were cited in a European Search Report issued on August 26, 2003 in EPO Application No. EPO1128816 (the "ESR") which corresponds to the above-identified application. The ESR cited four (4) "X" references and two (2) "Y" references, against originally pending EPO claims 1-9, none of which correspond to allowed claims 14-17 in the

referenced U.S. application. The ESR was not communicated to the applicant's U.S. counsel until November 7, 2003.

The references cited in ESR are not considered to be of particular relevance to the allowed claims. Applicants have reviewed the references and believe that they do not establish, alone or in combination, a prima facie case of unpatentability of any allowed claim of the above-identified application for at least the reasons set forth below:

U.S.P.No. 5,855,644 - All of the allowed claims in the referenced application are directed to a sauce which contains at least 40% balsamic vinegar of Modena. The cited patent does not reference balsamic vinegar of Modena, but rather only conventional balsamic vinegar. Further, the concentration of balsamic vinegar contained in the sauce of the cited patent is only about 11%. (See Col. 4, lines 49-50.)

WO 00 67750 - This reference is not directed to a product containing balsamic vinegar of Modena. To the extent the product of this reference contain balsamic vinegar, the concentration of balsamic vinegar in the sauce is only about 3%. (See, page 19, line 15.)

U.S.P.No. 5,565,233 - This patent is irrelevant to the presently claimed invention as it is directed to a balsamic vinegar preparation which is white or clear in color. As such, even if one were to characterize the product made by this reference as balsamic vinegar of Modena, the composition so made is 100% balsamic vinegar. It is not a thickened sauce of the type described and claimed in the instant application.

French Patent Publication No. 2,793,165 - is directed to a food-grade emulsion which contains an aqueous phase which may comprise balsamic vinegar. The French patent publication makes no reference to balsamic vinegar of Modena. To the extent that the described emulsion may contain any vinegar, it is limited to 0.1 to 20% vinegar in water.

U.S.P.No. 4,632,840 - This reference from the EPO Search Report is directed to a process for making a dressing comprising W/O/W type multiple emulsions, wherein the outer aqueous phase is prepared by adding an additive, which may be vinegar (col. 2, line 49), to water (col. 2, lines 35-39). The patent makes no reference to balsamic vinegar of Modena, and the only example in the patent which references vinegar describes adding 1000g of brewed vinegar to 3000g of water with 700g of constarch, 200g of sugar and 90g of salt. Accordingly, the concentration of vinegar in the aqueous phase described in this reference is only approximately 20%.

Patent Abstract 5 of Japan, Volume 008, No. 236 (C-249), 30 October 1984 and Database WPI, Section Ch., Week 198434, Derwent Publications Ltd., London, GB; Class D13, Page 3, AN 1984-209333 - These publications are directed to a bamboo containing sauce which may include 1-30 weight percent of a seasoning, which may be vinegar. The reference does not describe the use of balsamic vinegar of Modena, nor a basic preparation with lactose, dehydrated glucose syrup and maltodextrin, among other ingredients.

For at least the foregoing reasons, none of the references cited in the EPO Search Report are believed render the allowed claims unpatentable.

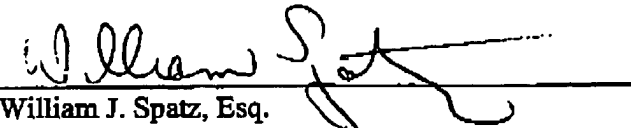
Copies of each of the above reference are enclosed along with an English language abstract for French Patent Publication No. 2793165. A complete English language translation of this reference is not readily available to applicant.

No fee is believed to be due with respect to this filing. However, if any fee is due, the Commissioner is hereby authorized to charge any such fee to Deposit Account No. 50-0540.

A duplicate copy of this communication is enclosed for charging purposes.

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